



\$~64(Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 838/2022 & CM APPL.36531/2022, CM
APPL.36532/2022

CHETAK LOGISTICS LIMITED Petitioner
Through: Mr.Ramesh Kumar, Adv.

versus

THE NEW INDIA ASSURANCE CO LIMITED & ANR.
..... Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% **23.08.2022**

1. This petition under Article 227 of the Constitution of India assails order dated 16th July 2022 passed by the learned District Judge (Commercial Court) in CS (Comm) 117/21 (*The New India Assurance Co. Ltd. v. Chetak Logistics Ltd.*).

2. The impugned order frames four issues as arising from the pleadings of the parties in the case. It specifically records the fact that no other issue arose, or was pressed by the parties.

3. The impugned order reads thus:

“CS (COMM)117-21

MIS THE NEW INDIA ASSURANCE CO LTD TH. ITS
DY.

MANAGER Vs. MIS CHETAK LOGISTICS LTD



16.07.2022

Present: Sh. Pankaj Kumar, Proxy Counsel for the plaintiff.
Sh. Sam Mathew, Counsel for the defendant.

Arguments heard on the application under Order 8
Rule 1 CPC moved by the defendant.

Keeping in view the averments made in the application, it is held that the defendant has filed the WS within a period of limitation. Application disposed of accordingly.

Counsel for the plaintiff filed the replication alongwith affidavit of admission-denial of documents. Copies given.

From the pleading of the parties, the following issues arise and framed as under:

1. Whether there is no privity of contract between the/plaintiff and the defendant as pleaded in the written statement? OPD
2. Whether the plaintiff is entitled to decree of recovery of Rs. 1,50,54,929/- as prayed for in the plaint? OPP
3. If answer to the issue no. 2 is in affirmative, whether the plaintiff is entitled to interest? If yes, at what rate and for which period? OPP.
4. Relief.

No other issue arises or pressed for by the parties.

Plaintiff is directed to file list of witnesses within 7 days from today. Plaintiff is also directed to file affidavit by way of evidence within 4 weeks from today with advance copy to the defendant/Counsel for the defendant.

Put up for settlement, if any, otherwise for PE on 21.09.2022.



Defendant is directed to file list of witnesses within 7 days from today. Defendant is also directed to file affidavit by way of evidence within 4 weeks from today with advance copy to the plaintiff/Ld. Counsel for the plaintiff.

Put up for DE on 12.10.2022.”

4. Prayer B in the present petition, which is the substantive prayer therein, reads as under:

“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased:

(b) To quash and set aside the impugned order dated 16.07.2022 and to frame the issues in the suit or to direct the Trial court to frame the same afresh, to direct the Respondents (Plaintiffs) to file their list of witnesses and evidence by way of affidavit of witnesses at the first instance, and the Petitioner may be called upon to do such exercise after the cross-examination of witnesses of the Respondents.”

5. I have heard Mr. Ramesh Kumar, learned Counsel for the petitioner at some length.

6. Insofar as the prayer of the petitioner, to direct the learned Commercial Court to allow the petitioner, as the defendant in the suit, to file his affidavit in evidence only after recording of evidence of the witnesses of the respondent (as the plaintiff in the suit) is complete, the prayer cannot be granted as it would be in the teeth of Order XV A (2) of the CPC as amended by the Commercial Courts Act, 2015, which reads thus:

“2. Orders to be passed in a Case Management Hearing – In a



Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order –

- (a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908) after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under rule 2 of Order X, if required;
- (b) listing witnesses to be examined by the parties.
- (c) fixing the date by which affidavit of evidence to be filed by parties;
- (d) fixing the dates on which evidence of the witnesses of the parties to be recorded;
- (e) fixing the date by which written arguments are to be filed before the Court by the parties;
- (f) fixing the date on which oral arguments are to be heard by the Court; and
- (g) setting time limits for parties and their advocates to address oral arguments.”

7. In directing both the petitioner and the respondent to file their respective list of witnesses and affidavits by way of evidence in a time bound manner, the learned Commercial Court has acted strictly in accordance with the protocol envisaged by Order XV A(2) *supra*. No exception can, therefore, be taken thereto. Allowing the prayer of the petitioner to be permitted to file his affidavit in evidence after the examination of the witnesses of the respondent is complete would be allowing a prayer to direct the learned Commercial Court to act in violation of the CPC as amended by Order XV A(2). Such a prayer obviously cannot be countenanced. The provisions of the Commercial



Courts Act have been held, in *Ambalal Sarabhai Enterprises Ltd. v. K. S. Infraspace LLP*¹, to be binding and non-negotiable.

8. As such, the prayer of the petitioner to be permitted to file his affidavit in evidence after the conclusion of the recording of the evidence of the respondent's witnesses is rejected.

9. The other grievance of the petitioner relates to the issues framed by the learned Commercial Court. The petitioner prays that the learned Commercial Court be directed to frame the issues afresh.

10. Mr. Ramesh Kumar's contention is that there were several preliminary objections raised by him which also ought to have been framed as issues, but that the learned Commercial Court has not done so.

11. There is no procedure known to the law by which, once issues are framed, the Court can be directed to frame the issues afresh, unless the order framing issues is itself set aside by a hierarchically superior court. In case the petitioner wants the issues to be re-framed, or for any issue to be either deleted or for any issue to be added, the remedy would lie under Order XIV Rule 5 of the CPC, which reads thus:

“5. POWER TO AMEND AND STRIKE OUT, ISSUES.

- (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all

¹ (2020) 15 SCC 585



such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

- (2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

12. Mr. Ramesh Kumar candidly acknowledges that no application under Order XIV Rule 5 was moved before the learned Commercial Court. He seeks liberty to move such an application before the learned Commercial Court so that he could persuade the learned Commercial Court to frame additional issues.

13. Leave and liberty is granted as prayed for.

14. This petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 23, 2022/kr